

National Organic Coalition

902 Commonwealth Avenue
Alexandria, VA 22301
sdetka@aol.com

May 12, 2006

Mark Bradley, Associate Deputy Administrator
Transportation and Marketing Division
National Organic Program
14th and Independence, SW
Room 4008- SO, Ag Stop 0268
Washington D.C. 20250

Submitted via email to: nop.livestock@usda.gov

[Docket Number: TM-06-06-PR]

Comments regarding the National Organic Program's Revisions to Livestock Standards Based on Court Order (Harvey v Johanns) and 2005 Amendment to the Organic Foods Production Act of 1990 (OFPA)

Dear Mr. Bradley:

I submit these comments on behalf the member organizations of the National Organic Coalition (NOC), a national alliance of public interest organizations working to provide a voice for farmers, ranchers, environmentalists, consumers and others involved in organic agriculture. The goal of NOC is to assure that organic integrity is maintained, that consumer confidence is preserved and that policies are fair, equitable and encourage diversity of participation and access. The current members of NOC are the Center for Food Safety, Rural Advancement Foundation International -USA, National Cooperative Grocers Association, and the Northeast Organic Farming Association -Interstate Council.

We welcome the opportunity to comment on this important regulation. However, given the extreme importance of this matter to all sectors of the organic community, and the complexity of the issues involved, we strongly believe that a 15-day comment period is a grossly inadequate period of time to garner full public comment. This is particularly true for organic farmers, many of whom are busy in their fields doing spring planting and field work.

Therefore, while we urge your strong consideration of these comments submitted by the initial May 12th deadline, we urge the agency to extend the comment period to facilitate greater public input.

Origin of Livestock (Section 205.236)

The members of NOC support the transitional feed language in the proposed rule, which is consistent with the November 10, 2005 Congressional Amendment to OFPA, and the petition for rulemaking filed with the agency by the Center for Food Safety, the National Organic Coalition, and others on June 22, 2005.

However, there is a need for a technical clarification to assure that the crops and forage used for organic dairy production are from land that is actually in its third year of organic management. For example, some organic systems plans call for transitioning fields at different rates. So it must be clarified that the transitional feed comes from the land that is actually in its third year of organic management, not simply land that is part of an organic system plan. This technical clarification can be achieved by adding commas to clarify that the phrase “third year of organic management” is used to modify “land” and not “organic systems plan.” (See proposed text amendment below)

On a related matter, the members of the National Organic Coalition appreciate and support the agency’s proposal to retain the requirement that once a dairy herd is converted to organic production, all dairy animals shall be under organic management from the last third of gestation. However, great ambiguity remains in the dairy conversion standard. As a result, some organic dairy operations, after their initial conversion, are adhering to a strict standard by only using replacement animals that have been managed as organic since the last third of their mother’s gestation. Other organic dairy operations are using a less strict standard, on a continuous basis, of bringing conventional replacement animals into their operations, managing them as organic for twelve months, and then adding them to their organic milking stock. This permits dairy operations using the less strict, continuous conversion standard to market milk from cows that were fed non-organic feed and treated with antibiotics or other prohibited substances as recently as 12 months prior to the marketing of that milk.

One of the main purposes of the Organic Foods Production Act is to “assure consumers that organically produced product meet a consistent standard. [Section 2102(2)]” Unless the Department corrects the dairy herd conversion standard to make it clear that once a dairy farm transitions to organic, all replacement animals on that farm should be raised as organic from the last third of gestation, a double standard will be perpetuated that violates this central tenet of OFPA.

Not only is this clarification important for purposes of assuring consumers a consistent standard for milk and dairy products labeled “organic,” but it is also of great economic importance to organic dairy farmers themselves. Organic dairy operations that adhere to the stricter standard for their replacement animals are placed at a significant competitive disadvantage if other organic dairy operations are permitted to use a less strict standard. In addition, organic operations that raise organic heifers for sale to organic dairy farms are harmed economically if the USDA standards perpetuate a loophole that reduces the demand for organic heifers.

Therefore, we recommend that the proposed regulation be amended as follows:

§205.236. Origin of Livestock.

(a) Livestock products that are to be sold, labeled, or represented as organic must be from livestock under continuous organic management from the last third of gestation or hatching: *Except, That:* ...

(2) *Dairy animals -conversion of herds.* Milk or milk products must be from animals that have been under continuous organic management beginning no later than 1 year prior to the production of the milk or milk products that are to be sold, labeled, or represented as organic. *Except, That,* crops and forage from land₁ included in the organic system plan of a dairy farm₂ that is in the third year of organic management, may be consumed by the dairy animals of the farm during the 12-month period immediately prior to the sale of organic milk and milk products.

~~(i) Once an entire, distinct herd has been converted to organic production, all dairy animals shall be under organic management from the last third of gestation.~~

~~(ii) [Reserved]~~

(3) *Dairy animal-* replacement stock. Once an operation has been certified for organic dairy production, all dairy animals, including all young stock whether born on or brought onto the operation, shall be under organic management from the last third of gestation.

~~(3)~~ (4) Breeder Stock. ...

Synthetic Substances [§205.600(b) and §205.605]

In the Background section of the Proposed Rule, the Department interprets the November 10, 2005 Congressional Amendment to OFPA as “permitting the addition of synthetic substances appearing on the National List for use in products labeled “organic.” We appreciate the Department’s recognition that all synthetic substances considered for use in products labeled “organic” must undergo the National List process through the National Organic Standards Board. This should include not only ingredients, but also food contact substances, processing aids, and adjuvants. However, we disagree with the Department’s decision to forgo issuing rules to clarify important and confusing implementation details with regard to the new statutory language. Unless such clarifications are made through rulemaking, handlers and certifiers will continue to be confused about which synthetic substances must be reviewed by NOSB, leading to an inconsistency in the standards.

Great care should be taken to assure that all National Organic Program regulations and policy statements are consistent and clear with regard to the need for all synthetic

substances (ingredients, processing aids, food contact substances, and adjuvants) used in products labeled “organic” to undergo a thorough review by the NOSB and to appear on the National List prior to use.

Therefore, we suggest that following:

1) USDA should withdraw the policy statement of December 12, 2002, entitled “Synthetic Substances Subject to Review and Recommendation by the National Organic Standards Board When Such Substances are Used as Ingredients in Processed Food Products.” This policy document exempts an entire class of FDA-listed “Food Contact Substances” from the National List process and NOSB, and appears to be in conflict with USDA’s interpretation of the November 10, 2005 Congressional OPFA amendment with regard to synthetic substances for use in products labeled “organic.”

Even though USDA’s own court filings during the *Harvey v. Veneman* case describe this policy document as being for “discussion” purposes and not final, it is nonetheless still posted on the NOP website, and continues to cause confusion among handlers and certifiers. [See Brief of Appellee at 23-24, n. 11, *Harvey v. Veneman*, 396 F.3d 28 (1st Cir. 2005) (No. 04-1379); also see testimony of Ecolab spokesperson at page 76 of the PDF version of the November 16, 2005 NOSB transcript].

2) Revise the criteria in §205.600(b) to clarify that the criteria are to be used in evaluating ANY substance used in organic processing and handling, not just processing aids and adjuvants, as currently stated in §205.600(b). Specifically, §205.600(b) should be amended to read:

“(b). In addition to the criteria set forth in the Act, any synthetic substance used in handling ~~as a processing aid or adjuvant~~ will be evaluated against the following criteria:

3) Revise §205.605 to clarify that all nonagricultural substances used in or on processed products labeled as “organic” or “made with organic,” not just those used as ingredients, should be restricted in accordance with this section.

Specifically, §205.605 should be amended to read:

§205.605. Nonagricultural (nonorganic) substances allowed as ~~ingredients in or on processed products~~ labeled as “organic” or “made with organic (specified ingredients or food group(s)).”

The following nonagricultural substances may be used ~~as ingredients~~ in or on processed products labeled as “organic” or “made with organic (specified ingredients or food groups(s))” only in accordance with any restrictions in this section.

Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as “organic” or “made with organic ingredients” (§205.606)

The November 10, 2005 Congressional Amendment to OFPA gave the Secretary authority to “develop emergency procedures for designating agricultural products that are commercially unavailable in organic form from placement on the National List for a period of time not to exceed 12 months.”

The agency has remained silent regarding the procedures that would be used for determining that an “emergency” designation is warranted. We expect that if the agency were to exercise this authority, it would first undergo a full 60-day notice and comment rulemaking process with regard to these emergency procedures. It is important that the public understand the procedures well in advance of any such “emergency” arising. Failure to engage the public in this discussion early in the process should not be used by the agency later as a justification for forgoing a full rulemaking on this matter.

We thank you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven D. Etka". The signature is fluid and cursive, with the first name "Steven" being the most prominent part.

Steven D. Etka
Legislative Coordinator